

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11490 JLT

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA (FORMERLY  
KNOWN AS THE TRAVELERS  
INDEMNITY COMPANY OF ILLINOIS)  
INDIVIDUALLY AND A/S/O DACON  
CORPORATION AND A/S/O  
CONDYNE VENTURES, LLC.,  
Plaintiff

vs.

GENESIS INDEMNITY INSURANCE COMPANY  
And TIG INSURANCE COMPANY,  
Defendants

**DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF  
UNDISPUTED FACTS**

In opposition to Plaintiff's Motion for Summary Judgment, Defendants hereby submit this Response to Plaintiff's Statement of Undisputed Material Facts.

1. Undisputed.
2. Undisputed.
3. Undisputed.
4. Undisputed.
5. Schedule A (Pl.App.Ex. 1) is extensive and speaks for itself.
6. Undisputed.
7. Undisputed.
8. Undisputed.
9. Undisputed.

10. Disputed to the extent that the cited references do not support the stated facts. It is undisputed that Martin was an SJV employee and that SJV had a subcontract with EFP to install Protectowire at the Freezer project.
11. Disputed. It is unclear what is meant by "climbed on top of". As is stated in the cited reference at Pl.App.Ex.4, p. 40, Martin climbed up the racks, on rungs like a ladder. Pl.App.Ex.4, p. 44.
12. Disputed inasmuch as the phrase "in the process of" is unclear. It is undisputed that Martin fell and was injured.
13. Undisputed.
14. Undisputed.
15. Disputed. The cited language is as follows:

**Transfer of Rights of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. [Emphasis added].

The policy language allows subrogation for "any payment made." There has been no evidence of any payment made.

16. Undisputed.
17. Undisputed.
18. Disputed. The insurance coverage dispute centers on whether the accident was caused solely by the work performed by EFP at the Freezer project and it is the Additional Insured Endorsement that pertains to the coverage offered "additional insureds", not the Classification Endorsement Description.
19. Disputed inasmuch as this paragraph contains only a part of the Endorsement. Defendants respond that this Endorsement speaks for itself. They further state that, while the first paragraph of the language from the Broad Form Blanket Additional Insured Endorsement is accurately set forth, there are five other paragraphs, the third and fourth of which do not support the arguments set forth in Travelers' Memorandum. Those paragraphs are as follows:

This insurance does not apply to "bodily injury" or "property damage" arising out of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the additional insured(s) would have in the absence of the contract or agreement.

It is the intent of this endorsement to exclude all claims, demands or suits arising out of any "bodily injury" or "property damage" to which this insurance does not apply. There shall, therefore, be no duty or obligation on our part under this insurance to defend, respond to, investigate, or indemnify anyone for any such claims, demand or suit.

20. Disputed because, while the language quoted is accurate, it is not complete. Defendants state that the Endorsement is a written document that speaks for itself and further state that it also states as follows:

**CLASSIFICATION DESCRIPTION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

21. Undisputed.
22. Disputed. The Broad Form Blanket Additional Insured Endorsement limits the scope of coverage for additional insureds to whom the insured is obligated by valid written contract.
23. Disputed. The Genesis Policy does not provide the coverage as represented.

Respectfully submitted,  
The Defendant, Genesis Indemnity Insurance Co.  
By its attorney,

/s/Jocelyn M. Sedney  
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The Defendant, TIG Insurance Company  
By its attorney,

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Dated: November 29, 2005